

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

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SLATER L. YOHEY.

Case No. 3:20-cv-00441-MMD-CLB

Petitioner,

ORDER

v.

PERRY RUSSELL, *et al.*

Respondents.

This is a habeas corpus matter under 28 U.S.C. § 2254 filed by a prisoner in the custody of the Nevada Department of Corrections. Petitioner has paid the filing fee. (ECF No. 5.)

Petitioner has also filed a motion for appointment of counsel. (ECF No. 1-3.) Although Petitioner has paid the filing fee, he is financially unable to afford counsel.

Having reviewed the petition (ECF No. 1-1), the Court finds that appointment of counsel is warranted. Petitioner alleges that in 2016 he was convicted pursuant to a guilty plea of two counts of robbery, one count of first-degree kidnapping, grand larceny of an automobile, and one count of eluding a police officer. The trial court imposed an aggregate sentence with a minimum term of 180 months and a maximum term of 636 months. Petitioner will spend a lengthy minimum time in prison, and that favors appointment of counsel. Additionally, counsel could help develop the claims in the petition.

It therefore is ordered that the Clerk of Court file the petition for a writ of habeas corpus, currently in the docket at ECF No. 1-1, and the motion for appointment of counsel, currently in the docket at ECF No. 1-3.

It is further ordered that the motion for appointment of counsel (ECF No. 1-3) is granted.

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1 It is further ordered that the Federal Public Defender is provisionally appointed as
2 counsel. The Federal Public Defender will have 30 days from the date of entry of this order
3 either to undertake representation of Petitioner, or to indicate to the Court the office's
4 inability to represent Petitioner. If the Federal Public Defender is unable to represent
5 Petitioner, then the Court will appoint alternate counsel, subject again to establishment of
6 financial eligibility. The Court will set a deadline for filing of an amended petition or a motion
7 seeking other relief after counsel has appeared. The Court anticipates setting the deadline
8 for 120 days from entry of the formal order of appointment. The Court does not signify any
9 implied finding of tolling during any time period established or any extension granted.
10 Petitioner always remains responsible for calculating the limitation period of 28 U.S.C. §
11 2244(d)(1) and timely presenting claims. The Court makes no representation that the
12 petition, any amendments to the petition, and any claims in the petition or amendments
13 are not subject to dismissal as untimely. See *Sossa v. Diaz*, 729 F.3d 1225, 1235 (9th Cir.
14 2013).

15 It is further ordered that the Clerk of Court add Aaron Ford, Attorney General for
16 the State of Nevada, as counsel for Respondents.

17 It is further is ordered that the Clerk of Court electronically serve both the Attorney
18 General of the State of Nevada and the Federal Public Defender a copy of the petition,
19 and a copy of this order.

20 It is further ordered that Respondents' counsel must enter a notice of appearance
21 within 21 days of entry of this order, but no further response will be required from
22 Respondents until further order of the Court.

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1 It is further ordered that the Clerk of Court provide copies of all prior filings to both
2 the Attorney General and the Federal Public Defender in a manner consistent with the
3 Clerk of Court's current practice, such as regeneration of notices of electronic filing.

4 DATED THIS 19th Day of October 2020.

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7 MIRANDA M. DU
8 CHIEF UNITED STATES DISTRICT JUDGE
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